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DAVID G. HENRY
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In re Application of :
MCDONALD :
Application No. 10/564,242 : **ON PETITION**
Filed: September 11, 2006 :
Attorney Docket No. Garlic – 1 US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 9, 2007, to revive the above-identified application. The requisite petition fee has been submitted.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled “Renewed Petition under 37 CFR 1.137(b).” This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 15, 2006, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned at mid-night on February 15, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1) above, the required reply.

Petitioner sets forth, under item 2 of the present petition, that “[t]he reply and/or fee to the above-noted Office action in the form of Amendment and Remarks” (1) “has been filed previously on 3/15/07 (NOT REC’D/PROCESSED)” and (2) “is enclosed herewith”. The United States Patent and Trademark Office (USPTO) has no record of the “Amendment and Remarks” petitioner

urges were previously filed on March 15, 2007. USPTO records also indicate that the present petition was not accompanied by an enclosed "Amendment and Remarks".

Any request for reconsideration of this decision, should be accompanied by evidence that sufficiently establishes, to the satisfaction of the Director, that a response to the November 15, 2006 non-final Office action was, in fact, filed with the USPTO on March 15, 2007 or (2) that an "Amendment and Response" to the November 15, 2006 non-final Office action accompanied the present petition on October 9, 2007. Evidence that sufficiently establishes that an "Amendment and Response" was filed on March 13, 2007 and/or with the present petition on October 10, 2007, should include a date stamped and properly itemized postcard receipt, a complete copy of the previously submitted "Amendment and Response", and a statement that the attached copy of the "Amendment and Response" is a copy of the "Amendment and Response" previously filed with the USPTO.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Brian W. Brown at (571) 272-5338.



Brian W. Brown
Petitions Examiner
Office of Petitions